

Last month, I issued an ETHICS ADVISORY to explain the rules about gifts between employees, concentrating on the exception that permits us to solicit for and give a gift to departing employees. One of the responses that I received said that this was all well and good, but what about gifts from contractors -- could I provide an ETHICS ADVISORY concerning this? So, what follows is an explanation about the rules concerning gifts from outside sources.

The basic rule is that we **must not** accept gifts from prohibited sources or which are offered to us because we are a Federal employee.

This sounds simple, but what's a gift? What's a prohibited source?

A gift is anything of value (e.g., discounts, entertainment, training, favor, discount, forbearance, hospitality). Simple enough. However, the Office of Government Ethics specifically excludes some items from this definition, to include the following:

Greeting cards, plaques and similar items with little intrinsic value that are meant for presentation purposes.

Coffee, donuts, and similar refreshments offered during a meeting (the "donut rule"). This does not include a working lunch.

Something offered to **all** Federal employees or **all** uniformed military personnel (may be restricted on a geographic basis).

Rewards or prizes given in contests or other events open to the general public, unless the employee entered the contest as part of his or her official duties (for example, if you attend a seminar, symposium or exposition as part of your official duties and you win a computer as a door prize, that computer belongs to the Government).

A prohibited source includes anyone doing business with the Army, trying to do business with the Army, seeking official action from the Army, or is affected by how the Army employee performs or does not perform his or her duties. This includes on-site contractors and their employees. Even if they work in the Federal workplace along side other Federal employees, they are "outside sources," "prohibited sources" delivering goods and services pursuant to a contract.

Sometimes private professional, scientific or technical associations argue that a proffered gift should be permissible because they are not a "prohibited source." They may or may not be correct about being a "prohibited source" at that particular time. But, it usually

does not matter whether the PO is a prohibited source because, in all likelihood, the gift would not have been offered if the recipient had not held his or her position as a Federal employee.

Of course, there are exceptions to the basic rule of "no gifts." Some of the exceptions are as follows:

1. If the fair market value of the gift is \$20 or less, you may accept it as long as you don't accept more than \$50 from the same source during the year using this exception. If the gift is a ticket, the fair market value is the price on the ticket. If the ticket price is \$25, you may **not** pay merely the difference (\$5) to keep within the exception -- you must pay the full price of the ticket (\$25). If you are offered two \$18 tickets, you may accept just one; or you may accept one as a gift and pay \$18 for the other one. If offered a five course dinner in a fancy restaurant downtown, you may **not** accept based on reciprocity (i.e., you intend to return the favor at a later date).

2. You may accept an award for outstanding public service as long as it is not coming from someone who is affected by how you perform your official duties. In most instances, before you accept, you must obtain a written Ethics Counselor determination that the award meets certain criteria.

3. You may accept an honorary degree in most cases. But, again, an Ethics Counselor determination will be required.

4. You may accept gifts based on outside business or employment relationships. For example, if your spouse works for an Army contractor and, as employee of the year, your spouse is given an all-expense paid trip to a resort in Cleveland, Ohio, you may accompany your spouse at the contractor's expense. Similarly, if you are seeking employment with a contractor who wants to bring you and your spouse to its home office in Indianapolis, you may accept this trip assuming that this is way that the company treats others at the level that you are interviewing.

5. You may accept free attendance at a social, dinner, seminar, or other event that is a "widely attended gathering" (a large number of persons with a diversity of views will attend) **if** your supervisor determines that there is "agency interest" in your attending (your attendance will further agency programs or operations). This determination requires Ethics Counselor concurrence and, if the person inviting you has interests that can be affected by how you perform or do not perform your duties, it must be in writing. If you attend such an event, you attend on your own time and at your own expense (e.g., you may not use an AMC metro card or an official car and driver).

Assume for a moment that you are offered a gift that meets one of these exceptions. Does your analysis end here? It does not! There still are times when we cannot accept a gift, such as:

If it is offered as a "quid pro quo." What if a contractor sent you a \$20 ticket to an Oriole's game as a "thank you" for providing some requested information in a timely manner. You should not accept something where it looks like it is in return for being influenced to perform an official act.

If it was solicited. For example, if an employee solicited \$20 gift certificates from a local restaurant to use as prizes for the office golf tournament, we may not accept them even though each would fit into the first gift exception.

If the employee receives gifts with such frequency that it looks as if the employee is abusing his or her official position. For example, if an ordering officer constantly receives lunches from various vendors during the year, he or she should refrain from accepting such gifts even though most of them are well under \$20 and the maximum of \$50 is never exceeded for any one source.

Finally, remember, it is never wrong to decline a gift. And, oft-times, a polite declination is the way to go, even if the rules say that you can accept it.

If you receive gifts from a source that are valued \$250 or more during a year, you must report the gifts if you file a public (SF 278) or confidential (OGE Form 450) financial disclosure report.

What if you receive a gift that you are not sure about? It might come in the mail, or someone may have left it on your desk. Ask your Ethics Counselor! Don't wait for the Inspector General to begin an inquiry... ask your Ethics Counselor about it right away. If it is an improper gift, there are a number of options. You can pay fair market value of it (now, it's no longer a gift). You can return it (at Government expense). If it's perishable (e.g., flowers or food) and not practical to return, with the concurrence of your supervisor or ethics counselor, you might give it to an appropriate charity, share it within your office, or destroy it.

If you are offered a gift and you have any doubts, decline it or tell the person offering it that you will have to check with your Ethics Counselor.

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or

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